

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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LOCAL NO. 856, INTERNATIONAL ASSOCIATION :	:	
OF FIRE FIGHTERS, AFL-CIO -- CLC, :	:	
MANCHESTER, NEW HAMPSHIRE :	:	
and :	:	CASE NO. <u>F-0104:1</u>
_____	:	
CITY OF MANCHESTER, NEW HAMPSHIRE AND :	:	DECISION NO. <u>780005</u>
BOARD OF FIRE COMMISSIONERS :	:	
_____	:	

APPEARANCES

Representing the Local No. 865, International Association of Fire Fighters:

Ronald A. Philibert, President
Roger L. Paradis, Vice President
Mark S. MacKenzie
William Rainey
Michael Nagle
Vincent A. Wenners, Esquire, Counsel for Local 865

Representing the Board of Fire Commissioners, City of Manchester:

Wilbur L. Jenkins, Chief Negotiator
John R. Lydon, Chief
William G. Durand, Deputy Chief

BACKGROUND

Nearing the end of their existing collective bargaining agreement, the parties commenced negotiations for a new contract. Among the items proposed for negotiations by the Union were the numbers of fire fighters manning companies and the staffing of the Fire Alarm Room. The Union sought to negotiate on these items as a matter of right and based its concern on the safety of its members and the public. The Union contended these items were included in prior contracts.

City negotiators refused to bargain or discuss the proposed items as within management's prerogative and as excluded from "Terms and Conditions of Employment" under RSA 273-A:1(XI). The Union filed a grievance on October 27, 1977 on which a hearing was held December 15, 1977 concerning which an interim order was issued that day for the parties to bargain on other issues.

The Board has now had an opportunity to review the facts and law and issues the following findings and order.

FINDINGS OF FACT AND RULINGS OF LAW

Absent a directive in the law not to bargain over a specific type of proposal, the statute requires, in RSA 273-A:3 that the parties must bargain in good faith

over the "terms of employment". These are defined in RSA 273-A:1(XI) as "wages, hours and other conditions of employment other than managerial policy within the exclusive prerogative of the public employer". (emphasis added). The emphasized phrase is defined in the same section "to include but shall not be limited to the functions, programs and methods of the public employer, including the use of technology, the public employers organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions".

N.B. As this Board has stated in earlier decisions (see SEA - State Negotiating Committee decision re: declaratory judgment), it considers the final phrase of the quoted section to set its tone. The Legislature did not wish to allow governmental direction to be bargained away. This means, among other things what the government is to do, how it is to do it, and who is going to perform it. Such matters are not required subjects for bargaining.

It must be stressed that the fact that any or all of the requested items were or were not in a prior contract does not alter whether they must be bargained about. In addition, the management rights clause in a prior contract does not control current negotiations nor can it alter the statutory requirements.

The Board does not doubt the sincere concern of the fire fighters for adequate staffing for their safety and that of the public. This concern is admirable. The Board also does not doubt that the Board of Fire Commissioners shares that concern. It may well be that the parties would be well served by discussion between them on the size of units for work, staffing of trucks, stations, alarm rooms, shifts of work and many other subjects which affect the safety of the public and the fire fighters. Indeed, the Board encourages the parties to hold such discussions and keep communications open between them to the greatest possible extent at all times on all subjects for their own benefit and the public's. Such discussion is not prohibited by RSA 273-A.

Nevertheless, the Board cannot find that the parties must bargain on the subjects requested by the Union. The employer has the responsibility quoted which the Board holds includes the selection of personnel and decision on how many personnel are to staff various units, departments, alarm rooms, and the like. The City has the ultimate responsibility for the operations of the fire department and the safety of the citizens and it has the statutory right to decide the structure, manning and staffing, and methods to carry out responsibility. The request by the Union that bargaining over manning and staffing take place, while understandably a concern, was outside the statutory requirements of RSA 273-A:3. The refusal of the City, therefore, was not illegal nor an unfair labor practice.

ORDER

The Board orders the parties to continue negotiations as specified in its December 15, 1977 Order on all required subjects not inconsistent with this Order. The City is not required to bargain over staffing matters unless it voluntarily elects to do so.



EDWARD J. HASELTINE, CHAIRMAN

Signed this 2nd day of February, 1978
Members Moriarty and Anderson also present. All concurred. Board Clerk Evelyn LeBrun also present.